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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,134	09/11/2000	Gerard Lang	05725.0654	8900

7590

03/26/2002

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 03/26/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-16

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/600,134	LANG ET AL.	
	Examiner	Art Unit	
	Eisa B Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

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Claims 22-58 are pending in this application.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 22-45 and 48-58 are provisionally rejected under the judicially created doctrine of double patenting over claims 29-61 of copending Application No. 09/600136. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that co-pending application since the referenced co-pending application and the instant application are claiming common subject matter, as follows: Both claims are drawn to the same dye composition comprising similar ingredients (oxidation bases, couplers and laccase type enzyme), having the same properties differing only in that the instant claims recite an oxidation dye composition comprising, oxidation bases such as 3-methy-4-aminophenol. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make such a dye composition because the co-pending Application 09/600136 recites in dependent claim a

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compound of the formula (II) wherein R6 represents C1-C6 alkyl group (see claim 42, and formula II). Therefore, the person of ordinary skill in the art would expect such composition to have similar properties to those claimed, absent unexpected results.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aaslyng et al. (WO' 97/19999) in view of Audousset et al. (US' 5,769,903).

Aaslyng (US' 999) teaches a dyeing composition for keratinous hair. The dyeing composition comprises oxidation bases such as para-phenylenediamines (see page 9, line 24), para-aminophenols (see page 9, line 25), couplers such as meta-aminophenols and meta-diamines (see page 10, line 36), meta-diphenols such as 1,3-dihydroxybenzene (see page 11, line 6), from 0.001 to 0.01 mg of laccase enzymes derived from plant, animal, fungal, bacteria, biotech and microbial origins such as *Myceliophthora thermophyla* (see page 6, lines 31-36) and *Polyporus pinsitus* (see page 8, lines 14-35). Aaslyng also teaches a method for dyeing hair comprising contacting a dyeing composition with the keratinous fibers under suitable conditions for a period of time sufficient to permit oxidation of the dye precursor into colored compound (see page 12, lines 1-13). The dyeing composition has a pH in the range from 3.0 to 9.0 (see page 8, lines 30-31). Regarding the amount of the dyeing ingredients, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the amounts of

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the dyeing ingredients in the dyeing composition so as to get the maximum effective amount because the reference teaches that the amounts of dye precursors and other ingredients used in the composition are in accordance with the usual commercial amounts (see page 8, lines 24-25).

The instant claims differ from the reference by reciting a multicompartment device or a kit for dyeing hair using dyeing method comprising the step of applying to the hair a dyeing composition that comprises dyeing ingredients such as a mixture of water, alcohol, acid addition salts, direct dye and additives.

Audousset et al. (US' 903) in analogous art teaches a hair dyeing composition comprising a medium which is suitable for dyeing made of water and organic solvent such as ethanol alcohol wherein the organic solvent presents in the amount of 1 to 40 % by weight of the total weight of the dyeing composition (see col. 9, lines 23-32), acid addition salts such as sulfates and tartrates (see col. 4, lines 45-48), additives such as surfactants (see col. 10, lines 1-9) and direct dye (see col. 9, line 65). Audousset also teaches a method for dyeing hair comprising the step of mixing the dyeing composition with oxidizing composition at the time of use then applying to the hair (see col. 10, lines 19-40). Audousset further, discloses a multicompartment device for dyeing hair (see col. 10, lines 62-67).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art would have been motivated to modify the primary reference by incorporating carriers such as water and organic solvents, direct dye and surfactants to make such a composition with multicompartment device as taught by audousset. Such modification would be obvious because one would expect that the use of water, organic solvents, direct dye and surfactants with a

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multicompartment device as taught by Audoussent would be similarly useful and applicable to the analogous composition taught by Aaslyng.


***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
Eisa  
March 18, 2002

GREGORY DELCOTTO  
PRIMARY EXAMINER

